

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Proposed  
Revocation of the Sales Tax Permit of  
Jandan, LLC, 5948 Emerson Ave. S.,  
Edina, Minnesota 55419-2115; MN  
ID No. 3411428

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick, on December 2, 1998, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed in this matter at the close of the hearing.

Wayne Sather, Staff Attorney, Minnesota Department of Revenue, 600 North Robert Street, Saint Paul, Minnesota 55146, appeared on behalf of the Department of Revenue (Department). Daniel and Janice Hanson, 5948 Emerson Avenue, Ave. S., Minneapolis, Minnesota 55419, appeared on behalf of Jandan, LLC, 5948 Emerson Avenue, Ave. S., Minneapolis, Minnesota 55419 (Respondent or Jandan). They are the owners of Jandan.

**NOTICE**

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of the Department of Revenue shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner of Revenue, 10 River Park Plaza, St. Paul, Minnesota 55146.

**STATEMENT OF ISSUE**

Should Respondent's sales tax permit be revoked for failure to pay Minnesota sales tax as required by Minn. Stat. §§ 297A.26 and 289A.20.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Respondent Jandan, LLC, is a small business in Minnesota, holding Minnesota sales and use tax permit number 3411428. Respondent operates a coffee house and is making retail sales and collecting sales tax on those sales.

2. The Department issued a Notice of Intent to Revoke Sales and Use Tax Permit to Respondent on September 16, 1998.<sup>[1]</sup> At the time of that notice, Respondent owed \$1,499.85 and had not filed sales tax returns for June, July, and August, 1998.

3. On October 14, 1998, Respondent requested an administrative hearing on the Department's proposed revocation.<sup>[2]</sup> Respondent sent the sales tax returns for June, July, and August, 1998, and \$504.00 in payment of the quarterly withholding tax along with its request for hearing.<sup>[3]</sup> Respondent questioned how the \$1,499.85 tax arrears were calculated.

4. At the hearing in this matter, Respondent filed sales tax returns for September and October, 1998. No payments of sales tax collected by Respondent accompanied those returns. As of December 2, 1998, the total amount of taxes and penalties identified in Respondent's returns as unpaid and overdue for May, June, July, and August, 1998, was \$5,436.63.<sup>[4]</sup>

5. Respondent had not entered into a repayment agreement with the Department to pay the amount owed as of the date of the hearing.

6. The Department issued a Notice and Order for Hearing in the matter on October 30, 1998.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Notice of Hearing is proper as to form and content and all other procedural and substantive requirements of statute and rule have been duly complied with.

2. The Department and the Administrative Law Judge have jurisdiction over this matter under Minn. Stat. §§ 297A.07 and 14.50.

3. Respondent owes the Department at least \$5,436.63 as of the date of the hearing for sales taxes, penalties, and interest.

4. Respondent failed to file sales tax returns in a timely manner for several months.

5. Respondent is obligated to file sales tax returns within one month of the month in which the tax was collected by Minn. Stat. § 289A.11. Respondent is obligated to pay the sales tax owed by the twentieth day of the month following the month when the tax was collected under Minn. Stat. § 289A.20, subd. 4.

6. As of the date of the hearing, no plan for repayment of the taxes owed had been entered into by Respondent and the Department.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke Sales Tax Permit number 3411428 held by Jandan, LLC unless the matter is sooner resolved by agreement of the parties.

Dated this 28th day of December, 1998.

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STEVE M. MIHALCHICK.  
Administrative Law Judge

Reported: Taped, not transcribed.

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **MEMORANDUM**

Respondent believes that the May, 1998 sales taxes were remitted, but does not know if the check for those taxes cleared. There is no evidence in the record to indicate that the amount was paid. The Department indicated that, should a cleared check be produced, Respondent's account will be credited accordingly. There are no disputes over the other amounts owed to the Department or that several sales tax returns were not timely filed, although all returns due had been filed before or at the hearing. Failure to pay sales tax owed is grounds for revoking a sales tax permit.

S.M.M.

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<sup>[1]</sup> Exhibit 1.

<sup>[2]</sup> Exhibit 2.

<sup>[3]</sup> Exhibit 2.

<sup>[4]</sup> Exhibit 6.